

LAWRENCE C. HERSH

Attorney at Law
17 Sylvan Street, Suite 102B
Rutherford, NJ 07070
(201) 507-6300
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

X

:

JOHN FRANK, :
Plaintiff, :
vs. : Civil Action No.
RECEIVABLES PERFORMANCE : **COMPLAINT AND JURY TRIAL**
MANAGEMENT, LLC, : **DEMAND**
Defendants. :
:

X

Plaintiff JOHN FRANK (“FRANK” or “Plaintiff”), by and through his attorney, Lawrence Hersh, Esq., complains against Defendant RECEIVABLES PERFORMANCE MANAGEMENT, LLC (“RPM” or Defendant) as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for damages and declaratory and injunctive relief arising from violations by Defendant under Title 47 of the United States Code, section 227, also known as the Telephone Consumer Protection Act (TCPA).

JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C. § 1331 and 28 U.S.C. § 2201 and under Mims v. Arrow Financial Services, LLC, 132 S. Ct. 740, 2012 WL 125249 (Jan. 18, 2012).

3. Venue in this District is proper in that the defendant transacts business here and the conduct complained of occurred here.

I. JURY DEMAND

4. Plaintiff demands a jury trial on all issues.

IV. PARTIES

5. Plaintiff JOHN FRANK, is a natural person residing in Haskell, New Jersey.

6. Based upon information and belief, Defendant RECEIVABLES PERFORMANCE MANAGEMENT, LLC is a limited liability company organized under the laws of the state of Washington with a principle business address of 20816 44th Avenue W, Lynwood, Washington, WA 98036.

II. FACTUAL ALLEGATIONS

7. On or about February 15, 2016, Plaintiff purchased a new cellular phone with telephone number (201) xxx-9459 assigned to the phone.

8. Shortly thereafter, Defendant began placing telephone calls to Plaintiff's cellular telephone number at an approximate rate of 30 or so calls per month.

9. Plaintiff is the sole subscriber of the cell account bearing the phone number of (201) xxx-9459, and has been the sole subscriber of that account at all times relevant hereto.

10. Plaintiff is the sole party financially responsible for the payment of account bearing the phone number of (xxx) xxx-9549, and has been the sole party financially responsible for that account at all times relevant hereto.

11. Plaintiff is the regular and sole user of the cellular phone number (201) xxx-9459, and has been the regular and sole user of that phone number at all times relevant hereto.

12. On information and belief, on a date better known to Defendant, Defendant began its campaign of communicating with the Plaintiff via the use of an automated telephone dialing system and/or prerecorded messages by calling his cell phone number of (201) xxx-9459 numerous times.

13. Defendant specifically used an automated telephone dialing system and called Plaintiff beginning in March 2016 until at least several months later.

14. The Defendant called from numerous phone numbers, including (425)-372-5310, which number belonged to Defendant.

15. The Defendant's prerecorded messages would typically advise that Plaintiff that it was seeking to collect a debt from Plaintiff.

16. However, Plaintiff never incurred the alleged debt and did not have an account assigned to Defendant for collection.

17. Plaintiff never gave Defendant his prior, express permission to call his cell phone via the use of an automated telephone dialing system or prerecorded voice messages.

18. Plaintiff had no wish to be contacted on his cell phone via the use of an autodialer and/or have prerecorded messages left for him,

19. On at least one occasion Plaintiff expressly directed Defendant or its predecessors to stop calling his cell phone number on numerous occasions.

20. By placing auto-dialed calls and/or prerecorded messages to the Plaintiff's cell phone, the Defendants violated 47 USC §227(b)(1)(A)(iii) which prohibits using any automated telephone dialing system or an artificial prerecorded voice to any telephone number assigned to a cellular telephone service when calling to the plaintiff's cell phone.

21. The Defendant therefore willfully violated the TCPA numerous times by placing calls to the Plaintiff's cell phone without his prior, express consent.

WHEREFORE, Plaintiff, demands judgment against Defendant as follows:

- (a) For statutory damages of \$500.00 pursuant to 47 USC §227(b)(3) for each and every call that Defendant made in violation of the TCPA;
- (b) For trebled damages to be awarded to the Plaintiff in accordance with the TCPA, for each of Defendant's willful or knowing violations of the TCPA; and
- (c) For an Award of prejudgment interest; and
- (d) For any such other ad further relief, as well as costs, expenses and disbursements of this action, as the Court may deem just and proper.

Dated: Rutherford, New Jersey
February 28, 2020

Respectfully submitted,

By: s/ Lawrence C. Hersh
Lawrence C. Hersh, Esq.
17 Sylvan Street, Suite 102B
Rutherford, NJ 07070
(201) 507-6300
Attorney for Plaintiff

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

I, Lawrence C. Hersh, the undersigned attorney of record for Plaintiff, do hereby certify to my own knowledge and based upon information available to me at my office, the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

Dated: February 28, 2020

By: s/ Lawrence C. Hersh
Lawrence C. Hersh, Esq